

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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DAVID L. KIRBY, III,

Plaintiff,

v.

5:21-CV-886-  
(MAD/ATB)

B. HANKS, SPD Police Officer; #0199,

Defendant.

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DAVID L. KIRBY, III, Plaintiff, pro se

ANDREW T. BAXTER, United States Magistrate Judge

**ORDER**

Following the April 10, 2023 Order of District Judge Mae A. D'Agostino (Dkt. No. 35), adopting my May 12, 2022 Order and Report-Recommendation, plaintiff's Second Amended Complaint (Dkt. No. 23) is the operative complaint in this action, with the sole surviving claim being the excessive-force claim against defendant B. Hanks (Syracuse Police Department Officer, Badge #0199).

**WHEREFORE**, based on the findings above, it is

**ORDERED**, that the Clerk shall issue a summons for defendant B. Hanks (Syracuse Police Department Officer, Badge #0199) and forward it, along with copies of plaintiff's Second Amended Complaint (Dkt. No. 23), this Order, and a packet containing General Order 25, which sets forth the Civil Case Management Plan used by the Northern District of New York, to the United States Marshal for service upon the defendant, and it is further

**ORDERED**, that a formal response to plaintiff's Second Amended Complaint be

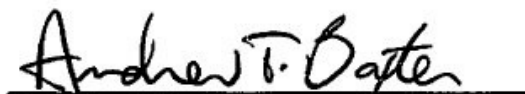
filed by defendant Hanks or his counsel as provided in the Federal Rules of Civil Procedure, subsequent to service of process on the defendant, and it is further

**ORDERED**, that the Clerk is directed to schedule a Rule 16 conference before me, and it is further

**ORDERED** that all pleadings, motions, and other documents relating to this action must bear the case number assigned to this action and be filed with the Clerk of the United States District Court, Northern District of New York, 7<sup>th</sup> Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of same was served on all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a proper certificate of service will be stricken from the docket.** Plaintiff must comply with all requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with the Local Rules of the Northern District of New York in filing motions. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel, in writing, of any change in his address; his failure to do so will result in the dismissal of this action;** and it is

**ORDERED**, that the Clerk of the Court serve a copy of this Order upon the plaintiff by regular mail.

Dated: April 11, 2023

  
Hon. Andrew T. Baxter  
U.S. Magistrate Judge